



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/154995

PRELIMINARY RECITALS

Pursuant to a petition filed January 21, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 25, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly implemented a tax intercept.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Silvestre, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 19, 2011, the agency sent Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], indicating that she was overpaid FoodShare benefits in the amount of \$2630 for the period of November 1, 2010 to March 31, 2011. (Exhibit 2, pg. 19)

3. On November 2, 2011, the agency sent Petitioner a Repayment Agreement. (Exhibit 2, pgs. 25-26)
4. Petitioner signed a document requesting a portion of her Foodshare benefit be deducted to satisfy the overpayment. (Testimony of Petitioner)
5. On November 17, 2011, the agency began recouping the overpayment by deducting 10% from Petitioner's FoodShare benefits. (The November 17, 2011 deduction was from December 2011 benefits) (Exhibit 2, pg. 8 and pgs.15-17)
6. On January 6, 2012, the Petitioner completed a six-month report form, but the requested verification was not processed by the agency until March 2012. Consequently, her case closed and she did not receive benefits for the months of February and March 2012. Because Petitioner did not receive FoodShare benefits in those months, no recoupment took place in those months. (Exhibit 2, pg. 11 and pg. 17)
7. The agency sent Petitioner dunning notices (reminders about the FoodShare overpayment) on February 2, 2012 and March 2, 2012. (Exhibit 2, pgs. 36-41)
8. Petitioner's FoodShare benefits began again in April 2012, as did the agency's monthly recoupment efforts. (Exhibit 2 , pgs. 15-16)
9. Petitioner needed to complete a six-month report form by December 31, 2012. The verifications were not processed by the December 31, 2012 deadline. Consequently, Petitioner's case closed and she did not receive benefits for January 2012. Because Petitioner did not receive benefits in that month, no recoupment took place. (Exhibit 2, pgs. 10 and 16)
10. The agency sent Petitioner a third dunning notice on January 3, 2013. (Exhibit 2, pgs. 42-43)
11. Petitioner's benefits resumed for February 2012, as did the agency's monthly recoupment efforts. (Exhibit 2, pgs. 15-16)
12. On January 17, 2013, the Public Assistance Collections Unit sent Petitioner a notice advising her that her tax refunds would be intercepted to satisfy the remaining \$2024 balance of the FoodShare overpayment. (Exhibit 2, pg. 46)
13. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 21, 2014. (Exhibit 1)

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

Review of the agency's documents reveal that the agency took proper steps to implement the tax intercept; it sent the Petitioner a hearing notice, a repayment agreement and three dunning notices. (Exhibit 2, pgs. 19, 26-26, 36-41, and 42-43)

Petitioner indicated that she filed an appeal to contest the balance remaining on the overpayment. Petitioner testified that she signed a document allowing the agency to deduct more than 10% of her FoodShare benefits. However, comparing the payment history provided by the agency with the tax intercept notice, it appears the agency only deducted 10% from Petitioner's FoodShare benefits and that it has correctly calculated the balance:

Total Overpayment	\$2630 (See Exhibit 2, pg. 19)
Total Recouped	-\$606 (See Exhibit 2, pgs. 15-17)
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Overpayment Balance	\$2024

The Petitioner also argues that she should be shown some consideration, because the agency erred in intermittently stopping her benefits and by sending her confusing notices. Regrettably, administrative law judges do not possess equitable authority – that is to say that they cannot make decisions based upon what a party thinks is fair; they are bound by the law as it is written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993).

CONCLUSIONS OF LAW

The agency correctly implemented the tax intercept.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of March, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 13, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit